

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.476/Kol/2019
Assessment Year: 2012-13**

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| Income Tax Officer, Ward-1(3), Kolkata. | Vs. | Worldwealth Dealers Pvt. Ltd. Hanspukur Lane, 2 nd Bye Lane, 4 th Floor, Room No. 58, Kolkata-700007. (PAN: AABCW4618E) |
| (Appellant) | | (Respondent) |

Present for:

Appellant by : Shri Vijay Kumar, Addl. CIT
Respondent by : N o n e

Date of Hearing : 18.01.2023
Date of Pronouncement : 16.03.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A)-1, Kolkata vide appeal No. 17895/CIT(A)-1/Kol/Ward-1(3)/2015-16 dated 17.01.2019 against the order of Ld. ITO, Ward-1(3), Kolkata passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 04.03.2015.

2. Before us, none appeared on behalf of the assessee. On going through the records, we find that on the earlier dates of hearing, none had represented the assessee and adjournments were given to provide reasonable opportunity of being heard to the assessee. Shri Vijay Kumar, Addl. CIT represented the Department. The present appeal is by the department and we are inclined to adjudicate on the matter ex parte qua the assessee by taking assistance from the Ld. Sr. DR.

2. Grounds of appeal raised by the revenue are reproduced as under:

"1) That on the facts and circumstances of the case and on Law Ld. CIT(A) has erred in granting relief to the assessee in respect of addition made u/s 68 of Rs.5,01,00,000/- by the AO for lack of explanation and for want of satisfaction, simultaneously, in respect of:

i. Identity of the persons with whom transactions took place.

ii. Genuineness of transactions for which credit entries entered in the books of Accounts.

iii. Capacity of the persons or their creditworthiness from whom such receipts were recorded.

2) That on the facts and circumstances of the case and on Law Ld. CIT(A) has erred in granting relief to the assessee without taking into account the Journal entries being passed and accounting entries made in the respective Ledger of books of accounts maintained by the assessee.

3) The Ld. CIT(A) erred in interpreting the applicability of the Sec. 68 in regard to invoking the provision stating that 'as no infusion of cash for purchase of shares and that cannot be held as being credited to the account of the assessee whereas the recording of the receipt in the Balance Sheet of the assessee establishes the credit of the sum in the Book of Accounts maintained by the assessee in the form of receipt of fresh share capital including share premium during F. Y. 2011-12.

4) The Ld. CIT(A) erred in overlooking the fact that the assessee company allotted its own shares instead of making payment, thus transferring the shares, while Ld. CIT(A) drawing conclusion basing on court decisions.

5) The appellant craves the leave to make any addition, alteration, modification etc, of the grounds either before the appellate proceedings, or, in the course of appellate proceedings."

3. From the perusal of the material placed on record, brief facts of the case are that assessee filed its return of income on 24.12.2013 reporting a total income of Rs.514/-. Case of the assessee was selected for scrutiny under CASS. Statutory notices were issued but were returned back with remark "Insufficient Address". Subsequently, notices were served by affixture. Ld. AO also issued notice on one of the directors Shri Amit Agarwal but it was also returned with the remark and "not known". Yet another notice was issued to the address of the another director, Shri Sanjoy Kumar Bajoria which according to the records with the Ld. AO was served but remained uncomplished. Later on, assessee filed a submission on 18.02.2015 containing certain documents which included audited financial

statement of the assessee, Form No. 2 and Form No. 5 filed with ROC, copy of I. T. Return Acknowledgment, Memorandum & Articles of Association and a list of shareholders.

3.1. In the course of assessment proceeding, Ld. AO enquired about the share capital and share premium totalling to Rs.5,01,00,000/- raised during the year by the assessee. In this respect, Ld. AO noted that assessee company was incorporated on 16.03.2012 i.e. at the fag end of the relevant FY 2011-12. Within these fifteen days of the financial year, assessee had raised aggregate share capital of Rs.5,01,00,000/- including huge share premium amounting to Rs.4,99,00,000/-. Ld. AO noted that this substantial credit in the books of account of the assessee with significant amount of share premium cannot be raised by the assessee in the very first year with just fifteen days of existence which need thorough verification but in absence of any details and documents furnished by the assessee, it could not be done. Ld. AO also noted from Form 2 that the shares were allotted for consideration other than cash but could not enquire into this transaction. Ld. AO thus, completed the assessment by treating the amount as unexplained cash credit and added it back to the income of the assessee by applying provisions of Sec. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A).

3.3. Ld. CIT(A) allowed the appeal of the assessee by noting that there was no infusion of cash for issue of shares and that the shares were issued by the assessee company for consideration other than cash in lieu of assessee making investment in shares in some other companies. The observations made by the Ld. CIT(A) by allowing the appeal of the assessee are worth noting and the same are reproduced as under:

“6. In other words, no amount has been credited to the Books of Accounts of the assessee for purchase of shares. IT was adjusted against investments

made. In other words, the share application was separate. Investment which had been made had been adjusted. The share capital was not issued on receipt of any cash. Shares were issued for consideration other than cash in lieu of assessee company making investment any shares in some other company.

(emphasis supplied by us by underline)

4. From the above observations of Ld. CIT(A) it is difficult to decipher the details of the transaction which transpired leading to relief granted to the assessee. There are no details on facts as to what was the investment which was made by the assessee against which it has issued its share capital along with share premium amounting to Rs.5,01,00,000/- by merely stating that “*shares were issued for consideration other than cash for making investment in some other companies*” and drawing a conclusion that u/s. 68 this addition cannot be sustained, if cash has not been received, is incomprehensible. We do not disagree with the contention that provisions of Sec. 68 cannot be applied if no cash/money has been received by the assessee for issue/allotment of shares.

4.1. We note that Ld. CIT(A) has merely stated the following while giving relief to the assessee which appears to be a general and casual observation. The same is reproduced as under:

“In other words, no amount has been credited to the Books of Accounts of the assessee for purchase of shares. It was adjusted against investments made. In other words, the share application was separate. Investment which had been made had been adjusted. The share capital was not issued on receipt of any cash. Shares were issued for consideration other than cash in lieu of assessee company making investment any shares in some other company.”

4.2. Ld. CIT(A) has drawn its conclusion basing on the decisions of Coordinate Benches and Hon’ble High Courts.

4.3. From ground no. 3 taken by the revenue, it has been contended that recording of receipts in the Balance Sheet of the assessee establishes the credit of the same in the books of account maintained by the assessee in the form of receipt of fresh capital including share premium during the year under consideration.

4.4. We also take note of the fact that Ld. AO could not make required enquiries in absence of the details and documents along with explanation which were sought from the assessee in respect of the claim that no fresh capital was introduced in the books of the assessee company rather shares were issued against investments made by it.

5. Principally, we are also of the view that where cash credit towards share capital is by way of book entries/adjustment and no actual cash/money is received/credited towards share subscription, no addition is called for under the provisions of section 68 of the Act. However, it is important that such a conclusion is arrived at only after due examination and verification of facts on record with corroborative evidence which should demonstrate that shares were issued against corresponding investments made as claimed by the assessee in the present appeal. We do not find any material on record which demonstrates such a claim made by the assessee and accepted by the Ld. CIT(A) while granting relief to the assessee. There is neither a paper book nor any written submission to look at for substantiating the claim made by the assessee. Accordingly, we are not in

agreement with the conclusion drawn by the Ld. CIT(A) on the facts of the present case, because it is devoid of due examination of the factual matrix on the claim of the assessee that shares were issued for consideration other than cash in lieu of assessee company making investment in some other companies. We set aside the order of Ld. CIT(A). Accordingly, grounds taken by the revenue in this respect are allowed.

5. In the result, appeal of the revenue is allowed.

Order pronounced in the open court on 16th March, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 16th March, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-1, Kolkata
 4. ITO, Ward-1(3), Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata